

STATE'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS

Aggravated DUI, driving drunk on an invalid/suspended/revoked driver's license, is a violation of Arizona law even if the driver's license was issued and revoked by another state.

The State of Arizona, by and through undersigned counsel, respectfully requests this Court to deny the defendant's Motion to Dismiss, based on the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF FACTS:

On October 11, 1995, Phoenix police officers arrested defendant Sondra Lee Freitas for driving under the influence of alcohol. When the police arrested her for DUI, she was driving on a revoked California driver's license. For this reason, the State filed a complaint on April 25, 1996 alleging that the defendant had committed aggravated driving under the influence of intoxicating liquor. On July 23, 1996, the State conducted a preliminary hearing in the Northwest Justice Court. The Court took the matter under advisement and dismissed the charges against the defendant on July 30, 1996. The rationale for the dismissal was that the State had failed to demonstrate that the defendant knew her privilege to drive in Arizona had been suspended, revoked, canceled, refused, or restricted.

On March 13, 1997, the Grand Jury indicted the defendant for the same charges that the Justice Court had previously dismissed. A copy of the Grand Jury transcript is attached as "Exhibit 1." On page five of the Grand Jury transcript, Officer Brown testified that the defendant stated that she knew her California driver's license was suspended.

Officer Brown indicated in her report that the defendant told her the reason for the suspension was related to her third DUI arrest in California.

The defendant's privilege to operate a motor vehicle and her license were revoked in California, effective June 8, 1993, for a minimum period of three years. [See California MVD Order of Revocation, attached as "Exhibit 2".] This period of revocation indicates that the defendant's driver's license and her privilege to drive were still revoked on October 11, 1995, the date of the present offense.

LEGAL ARGUMENT:

The defendant is charged with aggravated driving under the influence of intoxicating liquor in violation of A.R.S. §§ 28-1381(A)(1) and 28-1383(A)(1). A.R.S. § 28-1383(A)(1) states that a person is guilty of aggravated DUI if she commits "a violation of § 28-1381, § 28-1382 or this section while the person's driver license or privilege to drive is suspended, canceled, revoked or refused or while a restriction is placed on the person's driver license or privilege to drive as a result of violating § 28-1381 or 28-1382 or under § 28-1385."

The defense's position is that the State must prove that the defendant's privilege to drive in Arizona was restricted as a result of violating A.R.S. §§ 28-1381, 28-1382, or 28-1385, in addition to proving that the defendant's privilege to drive in Arizona was suspended, canceled, revoked or refused. This is clearly erroneous. Pursuant to § 28-1383, the defendant could be charged with aggravated DUI if she committed a violation of § 28-1381 while her driver's license was suspended, canceled, revoked or refused **or** while her privilege to drive was restricted as a result of violating § 28-1381, § 28-1382, or § 28-1385. In this case, the State has alleged that the defendant was driving under

the influence of intoxicating liquor pursuant to § 28-1382(A)(1) while her California license was revoked and/or suspended.

A.R.S. § 28-601(19) provides:

"Driver license" means **a license that is issued by a state** to an individual and that authorizes the individual to drive a motor vehicle.

[Emphasis added.] Thus, § 28-1383 does not require that a person charged with aggravated DUI has an **Arizona** license or privilege to drive which has been suspended, revoked, canceled, or refused. The defendant can be charged with aggravated DUI under that statute if her driver's license issued by **any** state is suspended, canceled, revoked, or refused.

In *State v. Kozlowski*, 143 Ariz. 137, 692 P.2d 316 (App. 1984), the Court of Appeals was presented with the issue of whether A.R.S. § 28-692.02 [now A.R.S. § 28-1383] applied to a person whose out-of-state license had been suspended, canceled, or revoked by the issuing state. *Id.* at 138, 692 P.2d 316, 317. The *Kozlowski* Court held that § 28-692.02 applied to "persons whose out-of-state licenses have been suspended, canceled or revoked by the issuing state, and evidence of such suspension, cancellation or revocation is relevant and admissible in a trial on the issue of guilt." *Id.* The *Kozlowski* Court noted that in *O'Hare v. Superior Court*, 138 Ariz. 247, 251 n. 6, 674 P.2d 310, 314 n. 6 (1983), the Arizona Supreme Court indicated in a footnote that "the felony statute pertaining to driving while intoxicated presently applies to out-of-state licenses."

In this case, on October 11, 1995, the date of defendant's arrest for driving under the influence in Arizona, the State of California had revoked the defendant's California

license and privilege to drive because of her prior California DUI convictions. The California MVD records showing that revocation are attached to this motion. In addition to the California MVD records regarding defendant's license revocation, the defendant admitted to Officer Brown on the night of the arrest that her California license was suspended for her prior California DUIs, and Officer Brown testified to this at the Grand Jury.

Thus, under *State v. Kozlowski*, the defendant can be charged with aggravated driving under the influence, based on the fact that her California license and privilege to drive were revoked at the time she was arrested in Arizona for DUI.

CONCLUSION:

For the above stated reasons, the State respectfully requests this Court to deny the defendant's Motion to Dismiss.